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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 THERESA CASTILLO SMOLL,) NO. EDCV 08-00846 SS
12 Plaintiff,)
13 v.) MEMORANDUM DECISION AND ORDER
14 MICHAEL J. ASTRUE,)
15 Commissioner of the Social)
16 Security Administration,)
17 Defendant.)
18
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20 INTRODUCTION
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22

23 Theresa Castillo Smoll ("Plaintiff") brings this action seeking to
24 overturn the decision of the Commissioner of the Social Security
25 Administration (hereinafter the "Commissioner" or the "Agency") denying
26 her application for Disability Insurance Benefits ("DIB"). The parties
27 consented, pursuant to 28 U.S.C. § 636(c), to the jurisdiction of the
28 undersigned United States Magistrate Judge. This matter is before the
Court on the parties' Joint Stipulation ("Jt. Stip.") filed on March 18,
2009. For the reasons stated below, the decision of the Commissioner
is AFFIRMED.

PROCEDURAL HISTORY

Plaintiff filed an application for DIB on August 4, 2003. (Administrative Record ("AR") 61-63). Plaintiff asserted disability due to a work-related injury of her spine and wrists. Plaintiff claimed that her conditions began on April 18, 2002. (AR 61).

The Agency denied benefits on initial examination and on reconsideration. (AR 48-51; 53-57). Plaintiff requested a hearing before an administrative law judge ("ALJ"). (AR 58). A hearing went forward before ALJ Charles E. Stevenson on August 3, 2005. (AR 414-44). The ALJ denied benefits on April 21, 2006. (AR 18-26). Plaintiff requested Appeals Council review on June 6, 2006. The Appeals Council denied Plaintiff's request for review on July 3, 2006. (AR 5). Plaintiff filed a complaint in the Central District of California seeking review of the Commissioner's decision.¹ On May 18, 2007, the parties stipulated to a remand because the record contained medical records that did not belong to Plaintiff. (AR 466; 478-79). The Appeals Council remanded the case back to the ALJ. (AR 468-69).

Accordingly, ALJ Stevenson held a supplemental hearing on April 9, 2008. (AR 547-60). The ALJ denied Plaintiff benefits on April 16, 2008. (AR 448). Plaintiff then commenced the present action on June 24, 2008.

¹ The original case number was EDCV 06-00899 SS.

FACTUAL HISTORY**A. Generally**

Plaintiff was born on December 30, 1968. (AR 416). Plaintiff achieved a high school diploma and received an associate degree. (Id.). Plaintiff worked as a data entry clerk at Kaiser Permanente until April 2002. (AR 421). Plaintiff has been working for the Ontario Montclair school district since May 2005. (AR 418-19; 554). Plaintiff began as a substitute employee, but has since become a permanent employee. (AR 419, 437; 555). As a result, Plaintiff now seeks benefits for a closed period of disability from April 18, 2002 to May 5, 2005. (AR 448).

B. Treating Physician

At the time of the hearings, Plaintiff's treating physician was Charles Sadler, M.D. (AR 70, 82). On April 18, 2002, Dr. Sadler diagnosed Plaintiff with a cervical spine strain and bilateral wrist and hand strain. (AR 254). On May 22, 2002, Plaintiff underwent a cervical spine MRI. (AR 152-53). The MRI showed a one millimeter central bulge visible at C4-5, C5-6, and C-6-7. (AR 152). On May 14, 2002, an electromyography of Plaintiff's upper extremities was mildly abnormal and indicated probable right ulnar nerve neuropathy at the cubital tunnel. (AR 150). In a report dated June 26, 2003, Dr. Sadler precluded Plaintiff from "very heavy work" because of her neck injury. (AR 180). Dr. Sadler also precluded Plaintiff from heavy lifting, pushing or pulling, repetitive or prolonged grasping and gripping, fine manipulation and prolonged or repetitive keyboarding. (Id.).

1 Dr. Michael J. Patzakis, M.D., examined Plaintiff as an agreed
2 medical examiner pursuant to a workers' compensation claim Plaintiff
3 brought against her former employer. (AR 374-381). On October 28,
4 2003, Dr. Patzakis diagnosed Plaintiff with status post ulnar nerve
5 transfer anteriorly of the right elbow, chronic cervical sprain with
6 minimal disc bulging one millimeter per MRI multiple levels and mild
7 clinical carpal tunnel syndrome in the left wrist. (AR 378). Dr.
8 Patzakis found that Plaintiff's condition was permanent and stationary.
9 Dr. Patzakis opined that Plaintiff "should use a computer intermittently
10 and not more than 3 hours a day for a short period each time." (AR
11 380.) Dr. Patzakis noted that:

12
13 [Plaintiff] is precluded from very heavy work in regards
14 to her neck. In regards to her left hand, she is precluded
15 from prolonged or repetitive grasping, from using any hand
16 tools on a repetitive basis, and from prolonged or repetitive
17 data input and typing with her left hand. No restrictions
18 are necessary for her right upper extremity. A reasonable
19 grip strength loss would be approximately 25% of her left
20 hand.

21
22 (AR 380).
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1 **C. Consultative Physician**

2
3 Dr. J. Pierce Conaty, M.D., an orthopedic consultant, examined
4 Plaintiff at the request of the Department of Social Services ("DSS")
5 on March 2, 2004. (AR 320-23). Dr. Conaty found that Plaintiff had no
6 evidence of cervical spine pathology and diagnosed her with status
7 postoperative cubital tunnel release in her right wrist and suggestion
8 of carpal tunnel syndrom on her left. (AR 323). Dr. Conaty set forth
9 the following limitations:

10
11 Lifting and carrying would be 50 pounds occasionally and
12 25 pounds frequently, standing and walking for six hours in
13 an eight-hour workday, and sitting for six hours in an eight-
14 hour workday. Reaching in all directions as it relates to
15 the right upper extremity would be slightly limited. There
16 are no manipulative limitations as it relates to gross or
17 fine manipulation bilaterally.

18
19 (AR 323).
20

21 On October 12, 2005, the DSS also ordered a psychiatric evaluation
22 of Plaintiff. (AR 394-401). The report notes that Plaintiff was mildly
23 depressed and anxious, but concludes that "claimant's psychiatric
24 limitations are none to mild." (AR 399-400). The report indicates that
25 Plaintiff's daily activities included taking her child to school and
26 performing household chores. (AR 399). On March 22, 2004, The
27 Disability Determination Service ("DDS") completed a Residual Functional
28 Capacity ("RFC") assessment regarding Plaintiff's physical disabilities.

1 (AR 325-32). The DDS found that Plaintiff could perform "medium work
2 without . . . limitations." (AR 332).

3
4 **D. Plaintiff's Testimony**

5
6 At the 2006 hearing, Plaintiff testified that she suffered from
7 neck pain, headaches and pain in her hands. (AR 421-22). Plaintiff
8 described the pain as radiating from her neck and shooting up her arms
9 through her elbows. (Id.). Plaintiff stated that the headaches caused
10 her to have to lay down for about two hours. (AR 424). Plaintiff
11 stated that surgery on her right elbow had relieved much of the pain in
12 her right hand, but that numbness and tingling persisted. (AR 426).
13 Plaintiff noted that the pain in her left hand continued and that she
14 experienced swelling in that hand. (AR 427). Plaintiff testified that
15 the pain in her hands was so intense that she could not pick up or hold
16 objects. (AR 430). Plaintiff noted that she had "tremendous"
17 difficulty sleeping because of her conditions. (AR 428). Plaintiff
18 testified that the pain and tension in her neck at times required the
19 use of cold packs and therapeutic pillows. (Id.). Plaintiff stated
20 that her impairments prevented her from interacting with her child. (AR
21 432). Plaintiff noted that the impairments required her husband to
22 perform household tasks such as cooking. (AR 433).

23
24 At the 2008 supplemental hearing, Plaintiff testified that the she
25 was unable to perform basic functions such as cooking or laundry. (AR
26 550). Plaintiff reiterated that the pain interfered with her sleep and
27 prevented her from holding objects. (AR 550-51).

1 At the 2006 hearing, Plaintiff testified that she was able to
2 perform work at the Ontario Montclair School District. (AR 418-19).
3 At the 2008 hearing, Plaintiff testified that the work required her to
4 provide translations and help with administrative tasks such as student
5 enrollment and verifying attendance. (AR 554-55). Plaintiff testified
6 that she attempted to return to work at Kaiser albeit with restrictions
7 on her duties, but was subsequently terminated from employment there.
8 (AR 431).

10 THE FIVE-STEP SEQUENTIAL EVALUATION PROCESS

12 To qualify for disability benefits, a claimant must demonstrate a
13 medically determinable physical or mental impairment that prevents him
14 from engaging in substantial gainful activity² and that is expected to
15 result in death or to last for a continuous period of at least twelve
16 months. Reddick v. Chater, 157 F.3d 715, 721 (9th Cir. 1998) (citing
17 42 U.S.C. § 423(d)(1)(A)). The impairment must render the claimant
18 incapable of performing the work he previously performed and incapable
19 of performing any other substantial gainful employment that exists in
20 the national economy. Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir.
21 1999) (citing 42 U.S.C. § 423(d)(2)(A)).

23 To decide if a claimant is entitled to benefits, an ALJ conducts
24 a five-step inquiry. 20 C.F.R. §§ 404.1520, 416.920. The steps are:

27 ² Substantial gainful activity means work that involves doing
28 significant and productive physical or mental duties and is done for pay
or profit. 20 C.F.R. §§ 404.1520, 416.910.

(1) Is the claimant presently engaged in substantial gainful activity? If so, the claimant is found not disabled. If not, proceed to step two.

(2) Is the claimant's impairment severe? If not, the claimant is found not disabled. If so, proceed to step three.

(3) Does the claimant's impairment meet or equal the requirements of any impairment listed at 20 C.F.R. Part 404, Subpart P, Appendix 1? If so, the claimant is found disabled. If not, proceed to step four.

(4) Is the claimant capable of performing her past work? If so, the claimant is found not disabled. If not, proceed to step five.

(5) Is the claimant able to do any other work? If not, the claimant is found disabled. If so, the claimant is found not disabled.

Tackett, 180 F.3d at 1098-99; see also Bustamante v. Massanari, 262 F.3d 949, 953-54 (9th Cir. 2001) (citations omitted); 20 C.F.R. §§ 404.1520(b)-(g)(1), 416.920(b)-(g)(1).

The claimant has the burden of proof at steps one through four, and the Commissioner has the burden of proof at step five. Bustamante, 262 F.3d at 953-54. If, at step four, the claimant meets his burden of establishing an inability to perform the past work, the Commissioner must show that the claimant can perform some other work that exists in "significant numbers" in the national economy, taking into account the claimant's residual functional capacity, age, education and work

1 experience. Tackett, 180 F.3d at 1100; 20 C.F.R. § 416.920(g)(1). The
2 Commissioner may do so by the testimony of a VE or by reference to the
3 Medical-Vocational Guidelines appearing in 20 C.F.R. Part 404, Subpart
4 P, Appendix 2 (commonly known as "the Grids"). Osenbrock v. Apfel, 240
5 F.3d 1157, 1162 (9th Cir. 2001). When a claimant has both exertional
6 (strength-related) and nonexertional limitations, the Grids are
7 inapplicable and the ALJ must take the testimony of a VE. Moore v.
8 Apfel, 216 F.3d 864, 869 (9th Cir. 2000).

9 10 THE ALJ'S DECISION

11
12 The ALJ found that Plaintiff meet the insured requirements of the
13 Social Security Act through June 30, 2009. (AR 450). At step one, the
14 ALJ found that Plaintiff had not engaged in substantial gainful activity
15 during the now applicable closed period of disability from April 18,
16 2002 to May 5, 2005. (AR 451).

17
18 At step two, the ALJ found Plaintiff's limitations as "right ulnar
19 neuropathy, mild to moderate carpal tunnel syndrom, and mild to moderate
20 cervical degeneration." (AR 451). The ALJ found that these limitations
21 caused more than minimal restrictions on Plaintiff's ability to perform
22 basic work related activities. (Id.). The ALJ concluded that Plaintiff
23 had "severe" impairments within the meaning of the Social Security Act.
24 (Id.).

25
26 At step three, the ALJ found that Plaintiff's impairments did not
27 equal one of the listed impairments in 20 CFR Part 404, Subpart P,
28 Appendix 1. (AR 451); 20 C.F.R. §§ 404.1520(d), 404.1525, 404.1526.

1
2 At step four, the ALJ found that Plaintiff was unable to perform
3 any past relevant work. (AR 455). Plaintiff's history included work
4 as a data entry clerk and office entry clerk. (Id.). The ALJ found
5 that Plaintiff was unable to perform these tasks because the impairments
6 to her hands. (Id.).
7

8 At step five, the ALJ found that Plaintiff could have performed
9 jobs that existed in significant numbers in the national economy. (AR
10 455). The ALJ posed the following limitations in a hypothetical to the
11 vocational expert ("VE"):
12

13 Consider light work generally. No prolonged or
14 repetitive typing or data input with both hands; no prolonged
15 or repetitive gripping or use of hand tools on a repetitive
16 basis; no prolonged or repetitive grasping or use of hand
17 tools on a repetitive basis.
18

19 (AR 557).
20

21 The VE noted that Plaintiff was able to perform the work she was
22 currently engaged in, which the VE categorized as interpreter and school
23 office clerk. (AR 557). The VE also testified that Plaintiff could
24 work as an information clerk, counter clerk, and a parking lot signaler.
25 (AR 557-58).
26
27
28

1 The ALJ found that Plaintiff had the following residual functional
2 capacity ("RFC"):

3
4 [T]o perform light work generally with lifting and
5 carrying 20 pounds occasionally and 10 pounds frequently,
6 sitting for six hours, and standing/walking for six hours in
7 an eight hour day except she was precluded from prolonged or
8 repetitive typing and data input with both hands, prolonged
9 or repetitive grasping, or use of hand tools on a repetitive
10 basis.

11
12 (AR 451).

13
14 Based on the above RFC and the testimony of the VE, the ALJ
15 concluded that Plaintiff was not entitled to benefits. (AR 456).

16
17 **STANDARD OF REVIEW**

18
19 Under 42 U.S.C. § 405(g), a district court may review the
20 Commissioner's decision to deny benefits. The court may set aside the
21 Commissioner's decision when the ALJ's findings are based on legal error
22 or are not supported by substantial evidence in the record as a whole.
23 Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001); Smolen v.
24 Chater, 80 F.3d 1273, 1279 (9th Cir. 1996).

25
26 "Substantial evidence is more than a scintilla, but less than a
27 preponderance." Reddick, 157 F.3d at 720. It is "relevant evidence
28 which a reasonable person might accept as adequate to support a

1 conclusion." Id. To determine whether substantial evidence supports
 2 a finding, the court must "'consider the record as a whole, weighing
 3 both evidence that supports and evidence that detracts from the
 4 [Commissioner's] conclusion.'" Aukland, 257 F.3d at 1035 (quoting Penny
 5 v. Sullivan, 2 F.3d 953, 956 (9th Cir. 1993)). If the evidence can
 6 reasonably support either affirming or reversing that conclusion, the
 7 court may not substitute its judgment for that of the Commissioner.
 8 Reddick, 157 F.3d at 720-21.

10 DISCUSSION

12 **A. As Plaintiff Could Perform The Jobs of Interpreter, School Office** 13 **Clerk And Parking Lot Signaler, The ALJ Properly Found Plaintiff** 14 **Not Disabled**

16 Residual functional capacity is what a claimant can still do
 17 despite existing exertional and nonexertional limitations. Cooper v.
 18 Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989). SSR 96-8p provides
 19 in relevant part: "RFC [residual functional capacity] is an assessment
 20 of an individual's ability to do sustained work-related physical and
 21 mental activities in a work setting on a regular and continuing basis."
 22 SSR 96-8p, 1996 WL 374184, at *1 (SSA July 2, 1996). At Step 5, "[a]
 23 'regular and continuing basis' means 8 hours a day, for 5 days a week,
 24 or an equivalent work schedule." Id. at *2 (footnote omitted). Light
 25 work is defined as work involving "lifting no more than 20 pounds at a
 26 time with frequent lifting or carrying of objects weighing up to 10
 27 pounds" and requiring "a good deal of walking or standing" or "sitting
 28

1 most of the time with some pushing and pulling of arm or leg controls."
2 20 C.F.R. §§ 404.1567(b) and 416.967(b).

3
4 Here, the ALJ found the following RFC for Plaintiff:

5
6 [T]o perform light work generally with lifting and
7 carrying 20 pounds occasionally and 10 pounds frequently,
8 sitting for six hours, and standing/walking for six hours in
9 an eight hour day except she was precluded from prolonged or
10 repetitive typing and data input with both hands, prolonged
11 or repetitive grasping, or use of hand tools on a repetitive
12 basis.

13
14 (AR 451).

15
16 If, at step four, the claimant meets her burden of establishing an
17 inability to perform past work, the Commissioner must show that the
18 claimant can perform some other work that exists in "significant
19 numbers" in the national economy, taking into account the claimant's
20 residual functional capacity ("RFC"),³ age, education and work
21 experience. Tackett, 180 F.3d at 1099-1100; Reddick, 157 F.3d at 721;
22 20 C.F.R. §§ 404.1520(g)(1), 416.920(g)(1). The Commissioner may do so
23 by the testimony of a vocational expert or by reference to the Medical-
24 Vocational Guidelines appearing in 20 C.F.R. Part 404, Subpart P,

25
26
27 ³ RFC is "the most [one] can still do despite [one's] limitations"
28 and represents an assessment "based on all the relevant evidence in
[one's] case record." 20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1).

1 Appendix 2 (commonly known as "the Grids"). Osenbrock v. Apfel, 240
2 F.3d 1157, 1162 (9th Cir. 2001).

3
4 Here, the ALJ presented the following hypothetical to the VE that
5 represented all of Plaintiff's limitations based upon the record:

6
7 Consider light work generally. No prolonged or
8 repetitive typing or data input with both hands; no prolonged
9 or repetitive gripping or use of hand tools on a repetitive
10 basis; no prolonged or repetitive grasping or use of hand
11 tools on a repetitive basis.

12
13 (AR 557).

14
15 The VE then testified that Plaintiff could perform work as an
16 interpreter, a school office clerk, an information clerk, a counter
17 clerk and a parking lot signaler. (AR 557-58). Based upon this
18 testimony, the ALJ found that Plaintiff was not disabled because she
19 could perform the work of receptionist and information clerk. (AR 456).
20 The ALJ further noted that Plaintiff could perform her "current work
21 activity as an interpreter for the school district and various other
22 clerical duties considering the restrictions . . . previously noted
23 herein." (Id.) (internal citations omitted).

24
25 Plaintiff contends that "the ALJ's determination that Plaintiff
26 could perform the jobs of information clerk and receptionist is
27 inconsistent with Plaintiff's RFC." (Jt. Stip. at 4). Plaintiff argues
28 that the limitations found by the ALJ would prevent her from performing

1 these occupations as they are described in the Dictionary of
2 Occupational Titles ("DOT").

3
4 In cases where the ALJ only considers positions contradicting the
5 DOT, remand may be warranted. Johnson v. Shalala, 60 F.3d 1428, 1435
6 (9th Cir. 1995) (holding that an ALJ "may rely on expert testimony which
7 contradicts the DOT, but only insofar as the record contains persuasive
8 evidence to support the deviation."); Light v. Social Security
9 Administration, 119 F.3d 789 (9th Cir. 1997) (remanding where
10 discrepancies between findings on residual functional capacity and DOT
11 were not explained by the ALJ or the VE); Social Security Ruling 00-4p,
12 2000 WL 1898704 (finding that "[o]ccupational evidence provided by a VE
13 or VS generally should be consistent with the occupational information
14 supplied by the DOT. When there is an apparent unresolved conflict
15 between VE or VS evidence and the DOT, the adjudicator must elicit a
16 reasonable explanation for the conflict before relying on the VE or VS
17 evidence to support a determination or decision about whether the
18 claimant is disabled").

19
20 Here, though, the ALJ did not solely rely upon positions
21 contradicting the DOT. The ALJ also relied upon the VE's testimony
22 that Plaintiff could perform the work of interpreter, school office
23 clerk and parking lot signaler. (AR 557-558). In his decision, the ALJ
24 explicitly noted that Plaintiff was able to perform the work of
25 interpreter and school office clerk. (AR 456). Accordingly, the ALJ
26 did not commit error because he identified jobs that the Plaintiff could
27 perform based upon her RFC and the VE's testimony. Alternatively, if
28 any error occurred, such error was harmless error because there existed

1 other jobs in the national economy that Plaintiff could perform. See
2 Curry v. Sullivan, 925 F.2d 1127, 1129 (9th Cir. 1990) (harmless error
3 rule applies to review of administrative decisions regarding
4 disability); Booz v. Sec'y of Health and Human Servs., 734 F.2d 1378,
5 1380-81 (9th Cir. 1984) (same). Thus, the ALJ properly found that
6 Plaintiff could perform as an interpreter and a school office clerk.
7 No remand is required.

8
9 **B. The ALJ Provided Clear And Convincing Reasons For Rejecting**
10 **Plaintiff's Subjective Testimony**

11
12 Plaintiff contends that the ALJ did not provide sufficient reasons
13 for rejecting her subjective testimony. This Court disagrees.

14
15 To determine whether a claimant's testimony regarding subjective
16 pain or symptoms is credible, an ALJ must engage in a two-step analysis.
17 First, the ALJ must determine whether the claimant has presented
18 objective medical evidence of an underlying impairment "which could
19 reasonably be expected to produce the pain or other symptoms alleged."
20 Lingenfelter v. Astrue, 504 F.3d 1028, 1036 (9th Cir. 2007)(citing
21 Bunnell v. Sullivan, 947 F.2d 341, 344 (9th Cir. 1991)(en
22 banc))(internal quotation marks omitted). The claimant, however, "need
23 not show that her impairment could reasonably be expected to cause the
24 severity of the symptom she has alleged; she need only show that it
25 could reasonably have caused some degree of the symptom." Id. (quoting
26 Smolen v. Chater, 80 F.3d 1273, 1282 (9th Cir. 1996)).

1 Second, if the claimant meets this first test, and there is no
2 evidence of malingering, "the ALJ can reject the claimant's testimony
3 about the severity of her symptoms only by offering specific, clear and
4 convincing reasons for doing so." Smolen, 80 F.3d at 1281.

5
6 The ALJ may consider the following factors when weighing the
7 claimant's credibility: (1) her reputation for truthfulness; (2)
8 inconsistencies either in her testimony or between her testimony and her
9 conduct; (3) her daily activities; (4) her work record; and (5)
10 testimony from physicians and third parties concerning the nature,
11 severity, and effect of the symptoms of which she complains. Thomas v.
12 Barnhart, 278 F.3d 947, 958-59 (9th Cir. 2002).

13
14 Plaintiff testified that she suffered from headaches that required
15 her to lay down for periods of up to two hours, tension in her neck that
16 required a cold ice pack and numbness and tingling in her hands. (AR
17 424-26).

18
19 The ALJ provided clear and convincing reasons for rejecting this
20 testimony. The ALJ found that "the clinical signs typically associated
21 were not consistently present on physical examinations." (AR 453). The
22 ALJ noted that the record contained no indication that Plaintiff
23 suffered from atrophy in her extremities or demonstrated persistent
24 neurological deficits or inflammatory signs. (Id.). The ALJ found that
25 Plaintiff's list of medications did not "reflect use of an inordinate
26 amount of pain medication," and that Plaintiff had not complained of any
27 side effects. (Id.; AR 393). The ALJ noted that "[Plaintiff]
28 maintained good mobility in her spine and the joints throughout her

1 upper and lower extremities, and that she ambulated with a normal gait
2 without the use of any assistive device." (AR 453; 321-22; 375-77).
3 The ALJ highlighted inconsistencies between Plaintiff's limitations and
4 her actual activities. (AR 453). The ALJ noted that the record
5 indicates that Plaintiff's activities included "walking and taking her
6 son to sports games; that she got her son ready for school; that she did
7 dishes and things around her house; and that she did errands during the
8 day." (AR 453; 396, 429). The ALJ contrasted this with Plaintiff's
9 testimony that her impairments restricted her from spending time with
10 her son and required her to lie down. (AR 453; 424, 432).

11
12 The ALJ found further inconsistencies within Plaintiff's testimony.
13 (AR 453-54). At the 2006 hearing, Plaintiff testified that her headache
14 pain required her to lay down. (AR 424). However, the record indicates
15 that Plaintiff worked up to thirty hours a week as a substitute during
16 this same period. (AR 394). The ALJ found that Plaintiff's testimony
17 was not credible because "it is highly doubtful that lying down on the
18 job would be tolerated by the claimant's employer." (AR 453). The ALJ
19 further noted a "great discrepancy between the claimant's own assertions
20 of her limitations and the findings of the two doctors in 2003 . . .
21 that her limitations would allow for some range of work." (AR 454).
22 The ALJ noted that both Dr. Patzakis and Dr. Sadler had only restricted
23 Plaintiff from very heavy work and precluded her from prolonged and
24 repetitive data entry, typing and grasping. (AR 454; 409; 180).

25
26 The ALJ provided multiple clear and convincing reasons for his
27 decision to give less weight to Plaintiff's subjective evidence. The
28 ALJ found repeated inconsistencies between Plaintiff's subjective

1 testimony and the record. By highlighting such inconsistencies, the ALJ
2 has adequately demonstrated that Plaintiff's credibility is suspect.
3 Thus, the ALJ provided the clear and convincing reasons necessary to
4 disregard such testimony.

5
6 **CONCLUSION**

7
8 Consistent with the foregoing, and pursuant to sentence four of 42
9 U.S.C. § 405(g),⁴ IT IS ORDERED that judgment be entered AFFIRMING the
10 decision of the Commissioner and dismissing this action with prejudice.
11 IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this
12 Order and the Judgment on counsel for both parties.

13
14 DATED: June 19, 2009.

15
16 _____/s/_____
SUZANNE H. SEGAL
17 UNITED STATES MAGISTRATE JUDGE
18
19
20
21
22
23
24
25

26 _____
27 ⁴ This sentence provides: "The [district] court shall have power
28 to enter, upon the pleadings and transcript of the record, a judgment
affirming, modifying, or reversing the decision of the Commissioner of
Social Security, with or without remanding the cause for a rehearing."